



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0352]

Commercial Driver's License Standards: Recreation Vehicle Industry Association Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant an exemption from the Federal commercial driver's license (CDL) requirements for drivers who deliver certain newly manufactured motorhomes and recreational vehicles (RVs) to dealers or trade shows before retail sale (driveaway operations). The Recreation Vehicle Industry Association (RVIA) requested the exemption because compliance with the CDL requirements prevents its members from implementing more efficient operations due to a shortage of CDL drivers. The exemption covers employees of all U.S. driveaway companies, RV manufacturers, and RV dealers transporting RVs between manufacturing sites and dealer locations and for movements prior to first retail sale. Drivers engaged in driveaway deliveries of RVs with gross vehicle weight ratings of 26,001 pounds or more will not be required to have a CDL as long as the empty RVs have gross vehicle weights or gross combination weights that do not meet or exceed 26,001 pounds, and any RV trailers towed by other vehicles weigh 10,000 pounds or less. RV units that have a combined gross vehicle weight exceeding 26,000 pounds are not covered by the exemption.

DATES: This exemption is effective April 6, 2015 and expires on April 6, 2017.

FOR FURTHER INFORMATION CONTACT: Mrs. Pearlie Robinson, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-4325, E-mail: MCPSD@dot.gov, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001.

Docket: For access to the docket to read background documents or comments submitted to notice requesting public comments on the exemption application, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. The docket number is listed at the beginning of this notice.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49

CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Application for Exemption

The RVIA is the national trade association representing RV manufacturers and their component parts suppliers who together build more than 98 percent of all RVs produced in the United States. An RV is a vehicle designed as temporary living quarters for recreational, camping, travel and seasonal use. RVs may be motorized (motorhomes) or towable (travel trailers, fifth wheel trailers, folding camping trailers and truck campers).

The RVIA requested an exemption from the CDL requirements under 49 CFR 383.91(a)(1) – 383.91(a)(2) when transporting RVs with an actual vehicle weight not exceeding 26,000 pounds, or a combination of RV trailer/tow vehicle with the actual weight of the towed unit not exceeding 10,000 pounds and the gross combined weight not exceeding 26,000 pounds. In other words, RVIA requested that CDLs not be required for driveaway operations of single or combination vehicles with a gross vehicle weight rating at or above 26,001 pounds, as long as the actual weight of the vehicle or combination is below 26,001 pounds. RV units that have a ship weight and combined gross vehicle weight exceeding 26,000 pounds would not be covered by the exemption. RVIA contended that compliance with the CDL rule prevents its members from implementing more efficient operations due to a shortage of CDL drivers. RVIA

asserted that FMCSA should look at the actual weight of the RV when it is manifested as empty and should not require a CDL during the short time the RV is not loaded, does not carry freight, and is transported from the factory where it is manufactured, or from a holding area, to a dealership site.

In its application, RVIA contended that a shortage of drivers with CDLs is having a significant impact on the RV industry, which is just recovering from the 2008-2009 economic downturn. A large percentage of RV sales occur during the spring buying season. The jump in RV shipments trends stronger each month, increasing consistently from February through June. These excess units regularly accumulate in RV transporters' yards. It is in this period that there is insufficient commercial driver capacity for RV transportation. The seasonal commercial driver shortage creates delays in the delivery of product to consumers and potentially reduces the RV sales.

Consumers who wish to purchase an RV may have to wait weeks or months to receive delivery of their purchase because there are not enough drivers with CDLs to transport the vehicles from the factory to the dealership, especially since each RV must be individually transported. While these delays are costly and inconvenient to the RV industry and consumers, the greater costs result in potential lost sales to consumers who are unwilling to wait for their purchase.

RVIA stated that the exemption would apply to all individuals who are employees of driveaway-towaway companies, RV manufacturers, and RV dealers.

RVIA contended that, due to the class nature and the number of parties that will be affected by the exemption, it is not feasible or practicable to provide the names of individuals or transporters responsible for use or operation of these CMVs. RVIA

asserted that exempting drivers delivering a subset of newly manufactured RVs from the Class A and B CDL requirements would likely result in the level of safety equivalent to, or greater than, the level achieved without the exemption. RVIA noted that a CDL is not required to operate these RVs when they are in personal use.

Method to Ensure an Equivalent or Greater Level of Safety

RVIA contended that, if the exemption were granted, the level of safety associated with transportation of RVs from manufacturers to dealers would likely be equivalent to, or greater than, the level of safety obtained by complying with the CDL requirements for the following reasons:

- On average, drivers employed by RV manufacturers and dealers to deliver RVs have substantially more experience operating RVs than a typical driver operating an RV for recreational purposes.
- A thorough analysis using the FMCSA Safety Measurement System revealed that the RV driveaway-towaway companies' record of 0.234 recordable accidents per million miles traveled in 2012 is far less than the national average of 0.747 recordable accidents per million miles traveled that was used as a benchmark by the FMCSA in fiscal years 1994-1996 when developing criteria for "Factor 6, Accident" of the "safety rating process."
- FMCSA established an "unsatisfactory rating" threshold for all carriers operating outside of a 100 air-mile radius with a recordable accident rate greater than 1.5 accidents per million miles traveled. Accordingly RVIA claims that the, RV driveaway-towaway accident frequency is approximately 640% less than the FMCSA unsatisfactory rating threshold for 2012, the most recent year for which

data is available. [In fact, RVIA's data shows that the accident frequency of RVs in 2012 (.234 per million miles) was only 15.6% of FMCSA's threshold for an unsatisfactory rating (1.5 accidents per million miles) (.23÷1.5-15.6%)]

- Compared to drivers using RVs for recreational purposes, RV manufacturers and driveaway-towaway companies have substantially greater economic incentive to systematically train, monitor and evaluate their RV drivers with respect to safe operation of RVs because of substantially greater exposure to liability for any traffic accidents.
- As with any new motor vehicle, newly manufactured RVs are much less likely to present a safety concern due to mechanical failures.
- Travel distances between the manufacturing sites and dealer locations are on average much shorter than typical distances which RVs travel when in recreational use and the highway presence of RVs transported from manufacturers to dealers is negligible even during the peak spring delivery season.

RVIA asserted that without the exemption, drivers making one-time deliveries of new RVs with a gross vehicle weight rating (GVWR) exceeding 26,000 pounds, or a gross combination weight rating exceeding 26,000 inclusive of a towed vehicle with a GVWR of 10,001 pounds or higher, will remain subject to CDL requirements even though end-users of RVs purchasing them from dealers in the same States would not be subject to those requirements and regulations. This anomalous situation would continue to materially curb the growth of the RV industry without countervailing safety or other benefit to the public. In particular, RV manufacturers and dealers would continue to experience a shortage of CDL operators during the busy spring season.

Public Comments

On October 1, 2014, FMCSA published notice of this application, and asked for public comment (79 FR 59343). Twelve comments were received to the public docket.

One respondent, the Advocates for Highway and Auto Safety (Advocates), recommended that the exemption not be granted. The Advocates concluded that “the RVIA application does not meet the statutory and regulatory requirements for the exemption. Advocates argue that the application fails to consider practical alternatives, justify the need for the exemption, provide information on the specific countermeasures to be undertaken to ensure that the exemption will achieve an equivalent or greater level of safety than would be achieved absent the exemption.”

Ten respondents supported the exemption: Campers Inn; Class Transport, Inc.; Florida RV Trade Association; Horizon Transport, Inc.; Pennsylvania Recreation Vehicle and Camping Association; Quality Drive-Away Inc.; Foremost Transport, Inc.; Recreation Vehicle Indiana Council; National RV Dealers Association; and Star Fleet Trucking, Inc..

The American Truck Dealers Division of the National Automobile Dealers Association (NADD) also supported the exemption and urged FMCSA to expand the requested exemption so that it applies to all new motor vehicles with an actual vehicle weight (or combination weight) below 26,000 lbs.

All comments are available for review in the docket for this notice.

Response to Public Comments and Agency Decision

The FMCSA has evaluated RVIA's application for exemption and the public comments, and has decided to grant the exemption. The RVs covered by the exemption all have gross vehicle weight ratings (GVWRs) above the 26,001-pound threshold for a CDL, but their actual weights, i.e., their gross vehicle weights (GVWs), will remain below that level during the driveaway or towaway operation of these vehicles. The Agency has held since 1993 that the CDL regulations do not apply to drivers of RVs, "if the vehicle is used strictly for non-business purposes" [Guidance to Q. 3 under 49 CFR 383.3, 58 FR 60734, at 60735, Nov. 17, 1993; posted on www.fmcsa.dot.gov]. For decades private owners and drivers of larger RVs, like those addressed in this exemption, have operated without CDLs, often at GVWs well above the 26,001-pound threshold, without generating any concern among law enforcement professionals that they pose a risk to highway safety. Furthermore, most private RV owners almost certainly have less experience behind the wheel of the RV than drivers employed specifically to deliver such vehicles to a dealer or customer. While RVIA demonstrated that the manufacturers and dealers who now employ CDL-holders in driveaway/towaway operations have a recordable accident rate far below the level that would require an unsatisfactory safety rating, the Agency's experience with private RV owners suggests that the absence of a CDL would have no discernible effect on safety. That is especially likely because the drivers covered by this exemption are required to comply with all other applicable safety regulation, including medical standards and hours-of-service limits. FMCSA believes that it is impracticable for these drivers to obtain a CDL with a representative vehicle when the actual vehicle they will operate is an RV. With regard to NADD's comment to expand the exemption, FMCSA is unable to consider expanding the exemption because

the issue was not in the original request for public comment. The Agency believes that the exemption sought by RVIA will likely achieve a level of safety that is equivalent to or greater than, the level of safety achieved without the exemption [49 CFR 381.305(a)].

Terms and Conditions of the Exemption

Period of the Exemption

This exemption from the requirements of 49 CFR 383.91(a)(1) – 383.91(a)(2) is effective during the period of April 6, 2015 through April 6, 2017. The exemption will expire on April 6, 2017, 11:59 p.m. local time, unless renewed.

Extent of the Exemption

The exemption is restricted to employees of driveaway-towaway companies, RV manufacturers, and RV dealers transporting RVs between the manufacturing site and dealer location and for movements prior to first retail sale. Drivers covered by the exemption will not be required to hold a CDL when transporting RVs with a gross vehicle weight not exceeding 26,000 pounds, or a combination of RV trailer/tow vehicle with the gross weight of the towed unit not exceeding 10,000 pounds and the gross combined weight not exceeding 26,000 pounds. These drivers must comply with all other applicable provisions of the Federal Motor Carrier Safety Regulations.

Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

Notification to FMCSA

The RVIA must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carriers' CMVs operating under the terms of this exemption. The notification must include the following information:

- a. Date of the accident,
- b. City or town, and State, in which the accident occurred, or closest to the accident scene,
- c. Driver's name and driver's license number and State of issuance,
- d. Vehicle number and State license plate number,
- e. Number of individuals suffering physical injury,
- f. Number of fatalities,
- g. The police-reported cause of the accident,
- h. Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and
- i. The driver's total driving time and total on-duty time period prior to the accident.

Reports filed under this provision shall be e-mailed to MCPSD@DOT.GOV.

Termination

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation or restriction of the exemption. The FMCSA will immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

Issued on: March 31, 2015

T. F. Scott Darling, III
Chief Counsel

[FR Doc. 2015-07811 Filed: 4/3/2015 08:45 am; Publication Date: 4/6/2015]